UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

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MDL NO. 1456

Master File No. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:
Robert J. Swanston v. TAP
Pharmaceutical Products Inc., et al.

Judge Patti B. Saris

DEFENDANTS' OPPOSITION TO PLAINTIFF ROBERT J. SWANSTON'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY DEFENDANTS AND FOR SANCTIONS

This Court's January 9, 2004 order remanding Swanston v. TAP Pharmaceutical Products Inc., et al. to Arizona state court renders Mr. Swanston's motion for production of documents by defendants in the AWP MDL moot.

In any event, Mr. Swanston's motion is wholly without merit. While this case was pending in state court, the court ordered that no discovery should take place until an acceptable protective order was in place. No protective order was ever entered in the state court proceeding and, accordingly, pursuant to the court's directive defendants did not produce any documents to Mr. Swanston's counsel. Once the case was transferred to this Court for coordinated or consolidated pretrial proceedings with the AWP MDL, Mr. Swanston became subject to Case Management Order No. 1, which clearly provides that the Lead Counsel Committee has sole authority for all class action plaintiffs with respect to the scope, order and conduct of all discovery proceedings in the AWR MDE. (CMO 1 ¶ 12). Accordingly, while his case was



before this Court, Mr. Swanston was not entitled to the unique treatment of receiving duplicate document productions from defendants.

For these reasons, Plaintiff Robert J. Swanston's Motion to Compel Production of Documents by Defendants and For Sanctions should be denied.

Respectfully Submitted,
ON BEHALF OF DEFENDANTS IN THE
ABOVE-CAPTIONED MATTER

By: Lucy Fowler
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Dated: January 13, 2004

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CERTIFICATE OF SERVICE

I certify that on January 13, 2004, a true and correct copy of the foregoing Opposition to Plaintiff Robert J. Swanston's Motion to Compel and For Sanctions was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties.

Lucy Fowler

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January 13, 2004

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By Hand

Clerk's Office, Civil U.S. District Court for the District of Massachusetts One Courthouse Way Boston, MA 02210

> In re Pharmaceutical Industry Average Wholesale Price Litigation, Re: No. 01-CV-12257-PBS

Dear Sir or Madam:

Enclosed for filing in the above-entitled matter please find:

Defendants' Response and Opposition to Robert J. Swanston's Motion to 1. Compel.

Please date-stamp the enclosed copy of this document and return it to our courier.

Thank you for your assistance with this matter.

Very truly yours,

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Lucy Fowler

LF

Enclosures

All Parties (by electronic service) cc:

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